Supreme Court of the United States.

OCTOBER TERM, 1896.

CHARLES M. DENNISON,
APPELLANT,
vs.
THE UNITED STATES.

No. ~~879~~. 84.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

RICH'D RANDOLPH McMAHON,
For Appellant.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1897.

Supreme Court of the United States.

OCTOBER TERM, 1896.

CHARLES M. DENNISON,
APPELLANT,
v.
THE UNITED STATES,
APPELLEE.

No. 379.

Appeal from the Court of Claims.

STATEMENT.

This action was brought by the appellant April 11, 1893, in the Court of Claims, for the recovery of fees for services performed by him as Chief Supervisor of Elections for the northern district of New York at the general elections held November 4, 1890, and November 5, 1892, and the prior registrations required therefor; and for fees due him for services as Commissioner of the Circuit Court for the same district at the general elections held November 6, 1888, and November 4, 1890.

The appellant prepared his account for services and expenses at each of the above-mentioned elections and the same was approved in open court, after examination

by the Judge and the District Attorney, in the manner and form set forth in the Findings by the Court of Claims on pages 13, 16, 17, 19, and 20 of the record.

The appellant's accounts, so examined, approved and allowed by the court, were presented to the accounting officers of the Treasury, and they disallowed the following charges for the services specified.

(ELECTION OF 1890.)

1. Filing and caring for 1,274 special reports of supervisors of election of the proceedings of the first meeting of the board of registry, giving: 1, names of inspectors composing board of registry; 2, the manner in which the board organized; 3, total number registered on first registration day; 4, whether or not any person registered illegally; 5, whether any difficulty occurred in obtaining answers as to whether applicant was native or foreign born, and, if foreign born, when and in what court naturalized; 6, whether or not the supervisors of election were allowed to discharge their official duties without restraint or interference, at 10 cents each.....$127 40

2. Filing and caring for preliminary and final registry books, required by the Chief Supervisor under sec. 2026, at 10 cents each.....$124 90

The charge was for filing and caring for 2,617 books, at 10 cents, $261.70. Of this the Comptroller allowed $136.80 and disallowed $124.90.

3. Drafting and signing reports to the Judge, required by section 2026, which reports furnished information with respect to the applications and appointments of supervisors, 484 folios, at 15 cents a folio.....$72 60

The U. S. Circuit Court required these reports to be in writing, signed by the Chief Supervisor, and filed in the Clerk's office.

4. Drawing instructions to supervisors relative to their duties, 106 folios, at 15 cents each.....$15 90

5. Making copies of applications from different cities for appointment as supervisors of election, to be annexed to the reports made to the Judge, 1,950 folios, at 15 cents each.....$279 50

These copies of applications for appointment as supervisors were attached to the Chief Supervisor's reports made to the Judge. The original applications were filed in the Chief Supervisor's office and necessarily remained there as part of his records. Copies of these applications were filed with the clerk of the court upon presentation of the Chief Supervisor's report, which contained his recommendations to the Judge as to who were proper and suitable persons to be appointed; and such copies were charged for as copies of papers on file in the Chief Supervisor's office (sec. 3031). The service was performed under the direction and sanction of the court.

6. Drawing 76 special orders to supervisors requiring them to verify the registry lists, under section 2026, 152 folios, at 15 cents each.....$22 80

7. Entering and indexing special letters of instruction to each supervisor, signed by the Chief Supervisor, containing: 1, notice of his appointment, naming his district, ward and city; 2, that commissions and blank oaths of office had been forwarded to ————, U. S. Commissioner, upon whom they must call to take oath of office and get commission; 3, that with commission each supervisor would find blank registry books, printed copy of general instructions; 4, requiring supervisors to acknowledge receipt of commission, registry books, and instructions, 2,890 folios, at 15 cents per folio.....$433 50

8. Entering and indexing special letters of instruction to supervisors signed by the Chief Supervisor, enclosing

blank report to be made for returning proceedings at first meeting of the board of registry, with special directions as to answering interrogatories, and when to make report. Each letter charged as a folio, 1,368 folios, at 15 cents each.....$205 20

These instructions were letters in duplicate. One was mailed to the supervisors; the other was bound in book form and indexed, and thus became a record of the Chief Supervisor's office. No charge was made for drawing these letters, but simply for the entering and indexing.

9. Entering and indexing special reports of supervisors of election of the proceedings of the first meeting of the board of registry, giving: 1, names of inspectors composing board of registry; 2, the manner in which the board was organized; 3, total number registered on first registration day; 4, whether or not any person registered illegally; 5, whether any difficulty occurred in obtaining answers as to whether applicant was native or foreign born, and if foreign born, when and in what court naturalized; 6, whether or not the supervisors of election were allowed to discharge their offical duties without restraint or interference, 3,822 folios, at 15 cents each....$573 30

10. Entering and indexing special letters of instruction to supervisors, signed by the Chief Supervisor, enclosing two blanks, one for a return of conduct of board of registry on completion of canvass and requiring a return of the vote cast for Representatives in Congress, the other requiring each supervisor to report the number of days served by him, 1,368 folios, at 15 cents each....$205 20

11. Entering and indexing reports required under Sec. 2026, on presentation of applications for the appointment of supervisors of election, which reports furnished information to the Judge in respect to the qualifications of each applicant, with copies of applications annexed, 2,373 folios, at 15 cents each.....$355 95

The original reports were made by direction of the court, and are entered and indexed in the Chief Supervisor's office for office use. A record of these reports is indispensable.

12. Entering and indexing pay-rolls of supervisors of election, and certifying the same to the U. S. Marshal, 513 folios, at 15 cents each.....$76 95

13. Entering and indexing special letters of instruction to supervisors notifying them of the number of days allowed, amount due, with directions as to the manner of verifying their clams, 1,368 folios, at 15 cents each.$205 20

14. Entering and indexing special orders requiring supervisors to verify their lists as required by sec. 2026, Revised Statutes, 152 folios, at 15 cents each.....$22 80

15. In the month of October, 1890, the appellant, as Commissioner, drew 1,368 oaths of office of supervisors of election, duly appointed in the northern district of New York, to serve at the general election to be held November 4, 1890, two folios each. His account for the same, duly verified by his oath, was submitted to the court, examined, and approved for $429.75. Said account, so approved, was presented to the accounting officers of the Treasury for payment, was allowed by the First Auditor, but the First Comptroller refused payment of $205.20, as follows:

"Account of Charles M. Dennison, U. S. Comm'r for the Northern District of New York, for fees from July 1, 1890, to June 30, 1891:

Amount claimed.....	$429 75
Amount found due by Treasury Statement.....	224 55
Difference.....	$205 20

One folio is sufficient for drawing supervisors' oaths of office. The excess is disallowed... .....$205 20"

Each oath contained exactly 160 words. The following is the form :

UNITED STATES OF AMERICA, } ss :
Northern District of New York, }

I, Andrew Shaw, of the city of Albany, N. Y., having been appointed one of the supervisors of election in and for the second election district, fifth ward of said city, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof ; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto. And I do further swear, that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic ; that I will bear true faith and allegiance to the same ; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

R., p. 16.

(ELECTION OF 1892.)

16. Drawing and signing 108 reports, required under sec. 2026, on presentation of applications for the appointment of supervisors of election, which reports furnished information to the Judge in respect to the qualifications of each applicant, 674 folios, at 15 cents per folio.. $100 10

This is the same as item 3.

17. Auditing claims of and drawing the pay-rolls of the supervisors of election for their claims for their services and certifying the same by separate cities to A. E. Baxter, U. S. Marshal, for payment, as per direc-

tions of the Attorney General, as follows: Albany, 87 folios; Auburn, 30 folios; Binghamton, 47 folios; Buffalo, 164 folios; Cohoes, 24 folios; Elmira, 31 folios; Oswego, 30 folios; Schenectady, 23 folios; Rochester, 100 folios; Syracuse, 110 folios; Troy, 56 folios; Utica, 43 folios; Watervliet, 28 folios—773 folios, at 15 cents. The Comptroller disallowed 531 folios, at 15 cents, and 13 certificates, at 15 cents..... $81 60

The form of entering and indexing the pay-rolls of the supervisors, after having been certified to the Marshal for payment, was as follows:

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles M. Dennison, a commissioner of the circuit court of the United States of America in and for the northern district of New York, and chief supervisor of elections in and for the same district, do hereby certify that I have examined the several claims of persons whose names appear in the schedule hereto annexed, headed "city of Troy, 1890," for per diems of service as supervisors of election for the respective districts following the name of each such person, rendered at the general election held in the State of New York, on the 4th day of November, 1890, and the prior registrations required therefor; and that I have compared the said several claims with the oath of office, reports, registry books of each supervisor of election, and the records of commissions issued to supervisors of election, and I find that the several persons named in said annexed schedule served the number of days as such supervisor of election following the name of each said several persons, and more particularly set forth in the column of said schedule headed "dates of days allowed," and that there is due to each said person the sum following his name as set forth in the last column of said schedule headed "amount found due."

In witness whereof I have hereunto set my hand and affixed my seal this 9th day of Dec., 1890.

[SEAL.] C. M. DENNISON,
Comm'r U. S. Circuit Court and Chief Supervisor of Elections, Northern Dist. of New York.

CITY OF TROY, 1890.

Name of supervisor.	E. D.	Ward	Claims.	Dates of days allowed.	Amount found due.
			Days.		
Michael Norton.....	1	1	10	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 @ $5 ..	$30
Albert Harrison.....	1	1	10	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Dennis H. Sullivan...	2	1	9	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Albert Nash.....	2	1	8	Oct. 11, 18, & 25; Nov. 4 & 5 = 5 " $5...	25
John J. Connelly	3	1	10	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Stephen A. Winters...	3	1	10	Oct. 4, 11, 18, 25, 27, 28, 29, & 30; Nov. 4 & 5 = 10 @ $5	50
Thos. A. Magee.....	1	2	8	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 @ $5...	30
Frank F. Salsbory.....	1	2	10	Oct. 4, 11, 18, 25, 27, 28, 29, & 30; Nov. 4 & 5 = 10 @ $5	50
James A. Leonard.....	2	2	7	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 @ $5...	30
Henry Meissner.....	2	2	7	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
John J. McAuliffe.....	3	2	10	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
George M. Powers.....	3	2	6	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Thomas F. Maxwell...	4	2	7	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Courtland Vandeker...	4	2	10	Oct. 4, 11, 18, 25, 27, 28, 29, & 30; Nov. 4 & 5 = 10 @ $5	50
John Shelley.....	5	2	6	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 @ $5...	30
Anthony P. Finder....	5	2	6	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Jeremiah O'Connor ...	1	3	10	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Claude Marcus Spencer	1	3	10	Oct. 4, 11, 18, & 25; Nov 4 & 5 = 6 " $5...	30
E. W. Reid.....	2	3	6	Oct 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30
Charles A. Bundy.....	2	3	6	Oct. 4, 11, 18, & 25; Nov. 4 & 5 = 6 " $5...	30

18. Entering and indexing applications of persons applying to be appointed supervisors of election, by entering the date, name of each applicant, election district, ward, city, residence by street and number, and political affinity, subsequently adding the date of commission, 1,913 folios, at 15 cents per folio.....$286 95

19. Entering and indexing oaths of supervisors of election, 2,560 folios, at 15 cents a folio, $384. Of this the Comptroller allowed 1,280 folios and disallowed 1,280 folios.....$192 00

20. Entering and indexing oaths of special deputy mar-

shals, 4,264 folios, at 15 cents, $639.60. Of this the Comptroller allowed 1,066 folios and disallowed 3,198 folios.....$479 70

21. Entering and indexing special letters of instruction to supervisors, signed by the Chief Supervisor, requiring and directing each supervisor to appear before a U. S. Commissioner, take the oath of office, and get his commission, his registry books, and printed copy of general instructions, to acknowledge receipt of commission, registry books, and instructions, 1,339 folios, at 15 cents each, $200 85

22. Entering and indexing special reports of supervisors of election of the proceedings of the first meeting of the board of registry, giving: 1, names of inspectors composing board of registry; 2, the manner in which the board organized; 3, total number registered on first registration day; 4, illegal registrations; 5, whether any difficulty occurred in obtaining answers as to whether applicant was native or of foreign birth, and, if foreign born, when and in what court naturalized; 6, whether or not the supervisors of election were allowed to discharge their official duties without restraint or interference, 2,320 folios, at 15 cents per folio.....$348 00

23. Entering and indexing special reports of supervisors of election at the close of the third meeting, giving: 1, total registration for October 8, 15, 22; 2, whether the lists contained the name or names of any person or persons whose right to vote is honestly doubted; 3, whether the supervisors of election have been obstructed in obtaining information of the right of foreign-born persons to register; 4, irregularities occurring on the part of registry officers during registration, 2,252 folios, at 15 cents per folio.....$337 80

24. Entering and indexing special reports of supervis-

ors by names, election districts, wards, and per diems claimed, following after audit, with per diems allowed and amount certified due to each, 1,166 folios, at 15 cents per folio $174 90

25. Entering and indexing reports signed by the Chief Supervisor, required by the court under sec. 2026 on presentation of applications for the appointment of supervisors of election, which reports furnished information to the Judge in respect to the qualifications of each applicant, 674 folios, at 15 cents per folio..... $101 10

26. Making, entering, and indexing records, such as mail lists, containing supervisors' names and P. O. address with columns for checking matter sent out by mail, and also receiving lists with columns for checking receipt of reports, returns, lists, etc., as received from supervisors, 175 folios, at 15 cents per folio..... $26 25

27. Entering and indexing official special letters of instruction to supervisors signed by the Chief Supervisor, certifying to each supervisor the number of days allowed him, and directing him to go before —— ——, U. S. Commissioner, sign the pay-roll, and take the oath verifying his claim, 1,166 folios, at 15 cents per folio..$174 90

28. In the month of October, 1892, the appellant, as Commissioner, drew 1,339 oaths of office of supervisors of election duly appointed to serve at the general election to be held November 8, 1892, two folios each. Said oaths were subscribed and sworn to by said supervisors, and are now on file in the appellant's office. The appellant's account for said service, duly verified by his oath, was submitted to and approved by the U. S. District Court, as aforesaid. When the account was presented to the accounting officers of the Treasury for allowance and payment they disallowed the following:

"For supervisors' oath of office one folio is sufficient. The excess is disallowed" $200 85

This item is in all respects like item 15, R., p. 19.

(ACCOUNT OF 1888.)

A general election was held throughout the State of New York on the 6th day of November, 1888, at which Representatives in Congress were voted for. The city of Troy, N. Y., then had a population exceeding 20,000 inhabitants, and supervisors of election were duly appointed in and for said city for the election aforesaid and the prior registration required therefor.

Within ten days after such election the following-named persons, who had been appointed and who served as supervisors of election in and for said city of Troy, namely: Rueben Rynders, 1st E. D., 2d Ward; Bernard J. Halligan, 2d E. D., 2d Ward; Albert Nash, 2d E. D., 1st Ward; Albert C. Somes, 1st E. D., 7th Ward, and John H. Manns, 13th Ward, under the provisions of sec. 2026, R. S., U. S., made separate reports, under oath, to the claimant, as Chief Supervisor of Elections, setting forth that neither of them had been allowed to exercise and discharge fully and freely and without hindrance, molestation, violence, or threats thereof by divers disorderly persons all the duties, obligations and powers conferred upon such supervisors of election, and the manner and means by which they were not so allowed to fully and freely exercise their said duties and obligations.

Upon the receipt of such report, the appellant, as required by sec. 2020, R. S., U. S., proceeded to examine into all the facts, issued subpœnas, compelled the attendance of witnesses, administered oaths and took testimony in respect to the charges aforesaid, and previous to the

assembling of the Congress for which such Representatives in Congress were voted for in said city of Troy, the appellant filed with the Clerk of the House of Representatives all the evidence taken by him, all information obtained by him, and reports made to him in the said charges.

The appellant's account for said services, approved in the manner set forth on page 20 of the record, was transmitted to the Treasury Department for allowance and payment.

The following items were disallowed by the accounting officers, and payment thereof refused:

ITEMS DISALLOWED IN ACCOUNT OF 1888.

29. Receiving and filing reports of supervisors Rynders, Halligan, Nash, Somes, and Manns, 10 cents each, $ 50

30. November 23 and 24, December 17 and 18, 1888, and April 1, 1889, to hearing, taking, and certifying the depositions and evidence of 46 witnesses herein, in all 1,149 folios, at 20 cents per folio. R., pp. 14, 15, 26. $229 80

31. Entering and indexing said depositions and evidence as records of Chief Supervisor's office, 1,149 folios, at 15 cents each.....$172 35

Of the foregoing items, aggregating $6,034.45, the Court of Claims, on May 27, 1895, allowed items 1, 2, 3, 6, 16, 29, and 30, and entered judgment for $678.10. From that judgment this appeal was taken.

Brief.

1. *The Duties of a Chief Supervisor.*

A Chief Supervisor of Elections, at the time this action was brought, was a Commissioner of the United States Circuit Court, designated to perform certain duties required under Title XXVI, known as the Elective Franchise.

Section 2025 provided that "the circuit courts of the United States for each judicial circuit shall name and appoint * * * from among the circuit court commissioners * * * one of such officers, who shall be known for the duties required of him under this title as the Chief Supervisor of elections of the judicial district for which he is a commissioner." * * *

The duties of the appellant, as Chief Supervisor, were embraced in sections 2016, 2017, 2018, 2019, 2020, 2026, and 2027 of the Revised Statutes.

The duties especially prescribed in section 2026 were as follows:

1. To prepare and furnish all necessary books, forms, blanks, and instructions for the use and direction of the supervisors of election. 2. To receive the applications of all parties for appointment as supervisors of election. 3. Upon the opening of the circuit court * * * "he *shall* present such applications to the judge thereof." 4. To furnish information to the judge in respect to the appointment by the court of supervisors of election. 5. To require of the supervisors of election, when necessary, lists of the persons who registered and voted, or either, in their respective election districts. 6. To cause the names of those upon any such lists whose right to register or vote was honestly doubted to be verified by proper

inquiry and examination at the respective places by them assigned as their residences. 7. To receive, *preserve*, and file all oaths of office of supervisors of election and of all special deputy marshals, all certificates, returns, reports, and records of *every kind and nature* contemplated or made requisite by the statutes, save where otherwise specially directed.

By section 2027, he was required to preserve and file all complaints, examinations, and records pertaining thereto, of all marshals and commissioners who, in any judicial district, performed any duties relating to, concerning, or affecting elections of Representatives or Delegates in Congress, and all oaths of office administered by them to any supervisor of election or special deputy marshal.

The duties required under section 2020 were to receive the verified reports of supervisors who had not been allowed to exercise and discharge fully and freely and without bribery, &c., all the duties, obligations, and powers conferred upon them; to examine into all the facts, issue subpœnas, compel the attendance of witnesses, and take testimony, acting both as Chief Supervisor and as Commissioner; to file with the Clerk of the House of Representatives all evidence taken by him, all information obtained, and all reports made to him.

2. *Fees and compensation.*

Section 2031 provided the fees and compensation for the appellant's services as Chief Supervisor, apart from and in excess of all fees allowed by law for the performance of any duty as Circuit Court Commissioner.

His jurisdiction extended over the northern district of New York, embracing the cities of Albany, Auburn, Binghamton, Buffalo, Cohoes, Elmira, Oswego, Rochester,

Schenectady, Syracuse, Troy, and Watervliet, each having upwards of 20,000 inhabitants. His office was at Utica, 95 miles from Albany, 85 from Auburn, 95 from Binghamton, 202 from Buffalo, 87 from Cohoes, 100 from Elmira, 93 from Oswego, 134 from Rochester, 70 from Schenectady, 53 from Syracuse, 90 from Troy, and 89 from Watervliet.

3. *The duties were performed, and the accounts were examined and approved by the court.*

When the appellant's services had been rendered at the Congressional elections of 1890 and 1892, he presented his accounts to the District Court of the United States for the northern district of New York. He and his chief clerk were examined, under oath, in open court, the accounts were approved and allowed, and the orders of approval duly entered of record.

The order approving the account for 1890, as set forth on page 3 of the Record, is in part as follows:

"And it appearing to the satisfaction of the Court by the oath of the said Chief Supervisor, annexed to said account, and an examination of the said Chief Supervisor under oath in open court that the services, as charged for in said account, have been actually and necessarily performed and the disbursements actually and necessarily incurred, as set forth in said account, a copy of which examination is attached to said account, and the charges appearing to the Court to be just and according to law, and the Court having asked the District Attorney whether there is any question of law or fact arising on said account which requires the decision of the Court and the Attorney having answered in the negative;

"It is hereby ordered, that said account, amounting for fees to $14,450.35, and the disbursements, amounting to

$2,162.44, in all $16,612.79, be and the same is hereby approved and allowed.

(R. pp. 13 and 14.)

"A. C. C."

The order approving the account for 1892 is partly in the following form:

"And it appearing to the satisfaction of the Court by the oath of the said Chief Supervisor and George E. Dennison, chief clerk of the said Chief Supervisor, under oath in open court, that the services as charged for in said account have been actually and necessarily performed and the disbursements actually and necessarily incurred as set forth in said account, a copy of which examination is attached to said account, and the court having asked the U. S. Attorney in open court if there were any questions of law or fact arising upon said account, as to which he desired the opinion of the court, and the District Attorney having replied in the negative, except as to the single matter which is referred to and set out in the said examination attached to the said account, and the charges in the said account appearing to be just and according to law;

"It is ordered, that said account for fees, amounting to sixteen thousand eight hundred and ninety-six and twenty-five one-hundredth dollars ($16,896.25), and for disbursements, amounting to two thousand one hundred and two and sixty-nine one-hundredth dollars ($2,102.69), in all amounting to eighteen thousand nine hundred and ninety-eight and ninety-four one-hundredth dollars ($18,998.94), be and the same is hereby approved and allowed.

(R. p. 7.)

"A. C. C."

After the accounts had been so examined, approved, and allowed by the court, they were presented to the accounting officers of the Treasury, who refused payment of the following items, not because the services had not

been performed, but on the ground that they were not necessary, or were not such as, in their judgment, were contemplated by the statutes relative to the Elective Franchise.

Item 1. Filing and caring for special reports of supervisors of election relative to the first meeting of the board of registry.

It was not only important, but absolutely necessary, that the Chief Supervisor should be kept informed of all matters connected with the registration as it proceeded, to see that the supervisors were properly performing their duties and to know of irregularities, violations of law, or cases requiring investigation, and to take suitable action thereon. Such reports have always been made and allowed. Like charges for filing like reports were allowed by the accounting officers in the appellant's accounts for 1887, 1888, 1889, and in his account for 1892. The very same service was allowed in *Dennison* v. *United States*, 25 C. Cls., 304. See sub-item 13. This was allowed by the court below.

Item 2. Filing and caring for registry books, preliminary and final, made by the supervisors of elections, and returned to the Chief Supervisor.

This service was authorized by sections 2016, 2019, and 2026, Rev. Stats. Section 2031 allowed a fee of 10 cents for filing each book, report or other paper. The same charge was allowed in *Dennison* v. *United States, ante;* sub-item 14. This was also allowed.

Item 3. Drawing original reports required by section 2026, to the Judge, and furnishing information with respect to the qualifications of applicants for appointment as supervisors of election.

With respect to this service and the charge therefor, the appellant testified:

"Like charges for the same service in 1887, 1888, and 1889, were allowed and paid. The United States Circuit Court for this district, as early as 1876, required these reports to be in writing, signed by the Chief Supervisor, and filed in the clerk's office. In 1890 I made 93 different reports in writing. It was impossible to get 2,000 applications from 12 different cities before the Judge at the same time. I was required by Judge Coxe, who made the appointments, to bring in the reports and applications as speedily as possible, so that he could examine them and have the commissions prepared and signed for use."

In *Dennison* v. *United States*, *ante*, this same charge was involved, but, in the findings of fact in that case (see sub-item 1), the words "entering and indexing" were incorrectly used, as will be found upon examining the record in that case (pp. 2, 44, 65), which shows that the charge which was claimed in the petition was for "drafting original reports, furnishing information to the Judge, with respect to the appointments by the court of supervisors in the several cities, consisting of copies of applications and their several recommendations and the recommendation of the Chief Supervisor." This was allowed by the court below.

Item 4. Drawing general instructions to the supervisors, relative to their duties.

Like services charged in appellant's accounts for 1887, 1888, 1889, and 1892 were allowed and paid by the accounting offices. The appellant recovered for like service in *Dennison* v. *United States*, 25 C. Cls., sub-item 10. This is identically the same charge as was allowed in the McDermott and Poinier cases. In the court below the appellant waived his charge for the printed instructions, to comply with the ruling in the McDermott case. As shown on page 3 of the record, his charges were, for preparing these instructions, $15.90; for filing and caring for

the same, 30 cents, and for printed copy $15.90. As he withdrew all except the charge for drawing, he is surely entitled to that.

"These instructions are prepared by the Chief Supervisor, printed, and a copy transmitted to each supervisor. Of the propriety of furnishing these instructions we have no doubt. * * * For preparing these instructions we think he is entitled to charge at the rate of 15 cents per folio." * * *

United States v. *McDermott*, 140 U. S. 155.

And in Poinier's case the Court said:

"This item (preparing instructions to supervisors) is allowed upon the authority of the *United States* v. *McDermott*, *ante*, 151."

United States v. *Poinier*, 140 U. S. 163.

Dennison's charge is the same.

Item 5. Making copies of applications for appointment as supervisors, to be attached to the Chief Supervisor's report to be made to the Judge, at 15 cents a folio.

The original applications were filed in the Chief Supervisor's office, and necessarily remained there as part of his records. Copies of these applications were filed with the clerk of the court upon presentation of the Chief Supervisor's report, which contained his recommendations to the Judge as to who were proper and suitable persons to be appointed; and such copies were charged for as copies of papers on file in his office. Section 2031. The service was performed by direction and under the sanction of the court. Like charges for like services were made in appellant's accounts for 1887, 1888, and 1889, and were allowed and paid by the accounting officers. There can be no doubt of the power of the court to order

the copies of the applications, as they were for the use of the court. *United States* v. *Van Duzee*, 140 U. S. 173.

Item 6. Drawing 76 special orders requiring supervisors to verify their lists under section 2026.

The testimony of the appellant as to this service was:

"In proper cases I am directed by section 2026 to require supervisors to verify their lists. The requisition for this service shall be in writing. It would be impossible to make it verbal. Out of some 1,400 supervisors in my district I gave authorizations to only 76."

This was allowed by the court below.

Item 7. Entering and indexing special letters of instruction to supervisors, containing notice of their appointment, naming their district, ward, &c., directing them where and before whom to take their oath of office, and requiring them to acknowledge receipt of commission, registry books, and instructions. No charge was made for drafting these letters, but simply for entering and indexing. Like services charged in appellant's accounts for 1887, 1888, and 1889 were allowed and paid. The services were exactly the same as sub-items 4, 5, and 6 in *Dennison* v. *United States*, *ante*. *Gayer* v. *United States*, 33 Fed. Rep. 625, item 3.

Item 8. Entering and indexing letters to supervisors, requiring report of proceedings at the first meeting of the board of registry, with special directions as to answering interrogatories. No charge was made for drawing these instructions. The same service was allowed, under the precise form of charge, in appellant's accounts for 1887, 1888, and 1889. *Dennison* v. *United States*, *ante*, sub-item 21.

Item 9. Entering and indexing reports of supervisors of the proceedings of the first meeting of the board of

registry, giving names of inspectors composing the board; the manner in which the board was organized; total number registered on first registration day; whether or not any person registered illegally; whether any difficulty occurred in obtaining answers as to whether applicants were native or foreign born, in what court naturalized; whether the supervisors were allowed to discharge their official duties, &c.

This is the same as sub-item 22 in *Dennison* v. *United States*, *ante*. *Allen* v. *United States*, 26 C. Cls. 445.

Item 10. Entering and indexing special instructions to supervisors, enclosing blanks, one for a return of conduct of board of registry on completion of canvass and requiring a return of the vote cast for Representatives in Congress, the other requiring each supervisor to report the number of days served by him. These instructions were letters in duplicate. One was mailed to the supervisors; the other was bound in book form and indexed, thus becoming a record of the Chief Supervisor's office. No charge was made for drafting these letters. Like items in appellant's accounts for 1887, 1888, and 1889 were allowed and paid, and appellant recovered for like services in *Dennison* v. *United States*, 25 C. Cls. 304, sub-item 19.

Item 11. Entering and indexing reports made to the Judge on presentation of applications for appointment as supervisors, which reports furnished information to the Judge with respect to the qualifications of each applicant.

These reports were required by section 2026. The original reports were made by the direction of the court, and entered and indexed in the Chief Supervisor's office for office use. The appellant testified that a "record of these reports is indispensable." Like charges for like

services were allowed in appellant's accounts for 1887, 1888, and 1889. The same charge was involved and allowed in Dennison's case, sub-item 3.

Item 12. Entering and indexing pay-rolls of supervisors of election and certifying same to the U. S. Marshal.

This was a necessary service. It was the Chief Supervisor's duty, as well as the instruction of the Attorney General, to audit and certify the amounts due the supervisors. No record of his office was more frequently referred to than these pay-rolls of the supervisors. Like charges were allowed in appellant's accounts for 1887, 1888, and 1889. The service is similar to that allowed in the Dennison case (sub-item 27), the only difference being the manner and form in which the work was charged for. *United States* v. *McDermott*, 140 U. S. 151.

Item 13. Entering and indexing special letters of instruction to supervisors, notifying them of the number of days allowed, the amounts due, and directing them as to the disposition of their vouchers.

These instructions were official letters in duplicate. One was mailed to the supervisors, the other was bound in book form and indexed, and thus became a record of the Chief Supervisor's office. No charge was made for drafting these letters, only for entering and indexing. Supervisors had to be informed of the amount due them, and how and when they would be paid. The appellant testified:

"Unless such course is taken this office would be overwhelmed with letters of inquiry. I recovered for like services against the United States. See sub-item 26 of Opinion."

Item 14. Entering and indexing special orders requiring supervisors to verify their lists.

This was for entering and indexing the special authorizations to supervisors to verify their lists, as required by section 2026 of the Revised Statutes. As a record for reference was necessary, it was essential that the orders be entered and indexed. Section 2026 made it the duty of the Chief Supervisor to "require of the supervisors of election, when necessary, lists of the persons who may register and vote, or either, in their respective election districts or voting precincts, and cause the names of those upon any such list whose right to register or vote is honestly doubted to be verified by proper inquiry and examination." * * *

The fee charged was in accordance with section 2031.

Item 15. Drawing oaths of office of supervisors.

The appellant, acting in his capacity as Commissioner, drew 1,368 oaths of office, 2 folios each. The accounting officers did not question the service, nor dispute the fact that the oaths were each two folios, but, as shown in the findings, they based the disallowance on the ground that "one folio is sufficient for drawing supervisors' oaths." The oaths, as shown in the findings, were 161 words. The disallowance was entirely without justification or warrant of law. The charge was absolutely just and proper, was in accordance with law, and was approved and allowed by the district court.

In *United States* v. *McDermott* (140 U. S. 151,) this Court said:

"As the petitioner is both Chief Supervisor and Commissioner, he may be allowed *at the rate of fifteen cents per folio* for drawing the oath, and 10 cents for administering it, as charged in his account."

(Services at the Election of 1892.)

Item 16. This is the same, exactly, as Item 3—for drawing reports to the judge with respect of the qualifications

of applicants for appointment as supervisors. It was allowed by the court below.

Item 17. Auditing claims and preparing pay-rolls of the supervisors of election for their claims for services, and certifying the same by separate cities to the U. S. Marshal.

As to this service the claimant testified :

"This service was actually performed, and the folios stated in my account are correct. The Comptroller allowed 242 folios and disallowed the balance, 531 folios. Upon a re-examination of this charge I find that the count of the folios is over rather than under the number charged. I first audit the claims of all the supervisors of each separate city, in duplicate, giving the name of the supervisor, election district, ward, city, number of days claimed, number of days allowed, with the dates, and carrying into the last column the amount found due. From these audit sheets I draw the oaths of the supervisors for verifying their claims, and send them with the pay-roll to different commissioners to have them subscribed and sworn to by the claimant. After the pay-rolls are returned by these United States commissioners I annex the audit lists, properly certified, to the pay-roll of each city and forward them to the United States marshal for payment."

Charges for similar services were allowed in *Dennison* v. *United States*, sub-item 27.

Item 18. Entering and indexing applications of persons applying to be appointed supervisors of election.

The Chief Supervisor entered the date, name of each applicant, election district, ward, city, residence by street and number, and political affinity, subsequently adding the date of commission. The applications were not *recorded;* the substance only was entered in the index. Many of the applications were accompanied by endorsements of individuals or committees. As the appellant

testified, these applications had to be carefully examined, and the character and political affinities of each applicant inquired into by letters of inquiry or special messengers, to enable him to give the correct information to the court upon presenting the applications. The appellant further testified that he was before the court at least on fifty different occasions with reference to the appointment of supervisors. The accounting officers allowed this charge in appellant's accounts for 1887, 1888, and 1889. As the applications were records of the Chief Supervisor's office—important records—it was not only proper but his duty to enter and index them.

In Poinier's case this Court, in passing upon a charge for *recording* and indexing appointments of supervisors, said:

"The charge of 15 cents per folio for *indexing* such appointments would seem to be proper, but the charge for *recording* them is unnecessary and should be disallowed as a mere effort to multiply fees."

There is no charge here for *recording* the applications, but for entering and indexing, as contemplated by section 2026. The fee was in accordance with section 2031.

Item 19. Entering and indexing oaths of supervisors of election. The First Comptroller did not question the character of the service nor dispute the fact that the oaths had been entered and indexed. He reduced the amount charged one-half, and disallowed the balance. The evidence showed that there were 2,560 folios. In his account for 1890, the appellant charged for entering and indexing the oaths of supervisors, 2,736 folios, and the charge was allowed and paid; and the same charges were allowed in his accounts for 1887, 1888, and 1889. The identical charge was allowed in Dennison's case, 25 C. Cls., sub-item 17.

Section 2027 required Commissioners, from time to time, and with all due diligence, to forward to the Chief Supervisor *all oaths of office administered to any supervisor of elections or special deputy marshal*, in order that the same might be properly prepared and filed. Thus they became records of the Chief Supervisor's office. In *McDermott* v. *United States* (40 Fed. Rep. 217), Circuit Judge Jackson, after reviewing the statutory provisions on this subject, said at page 220: "These oaths were therefore required by law to be taken and filed, and they thereupon became a part of the records in the office of the chief supervisor." As the charge for entering and indexing the oaths of special deputy marshals is involved in the next item, and both are to be similarly treated, under section 2027, what is said with regard to that item applies equally to this.

Item 20. Entering and indexing oaths of special deputy marshals, 4,264 folios, of which the Comptroller allowed 1,066 folios and disallowed 3,198 folios.

These oaths of special deputy marshals, as Justice Jackson said of the supervisors' oaths, "were required by law to be taken and filed, and they thereupon became a part of the records in the office of the chief supervisor." Being records of his office, the Chief Supervisor had the right, in his discretion, to enter and index them, and as he did such work the statute (section 2031) spoke as to his compensation—"for entering and indexing the records of his office fifteen cents per folio."

The very same charge for the same service was allowed by the Court of Claims in *Davenport* v. *United States* (No. 17,532, 26 C. Cls. 564), and upon appeal to this Court the judgment was affirmed by a divided court. *United States* v. *Davenport*, 159 U. S. 271.

As late as July 9, 1889, the Comptroller who disallowed these two items in part, after having allowed them in pre-

vious accounts of the appellant and in Davenport's accounts, prepared an opinion in which he set forth his views of the law and the methods of enforcing the same in the southern district of New York.

This opinion will be found in Senate Ex. Doc. No. 22, 2d session, 51st Congress. On page 46 the Comptroller says:

"The marshals and commissioners who perform any duties under the election laws, where Representatives in Congress are elected, from time to time, and with due diligence, shall forward to the chief supervisor all complaints, examinations, and records pertaining thereto, and all oaths of office by them administered to any supervisors of elections, or special deputy marshals, in order that the same may be properly preserved and filed by that officer. This much he *shall* do. That part of the law is mandatory, and commands that the reports, records, etc., shall be received and preserved by that officer, *which reports, etc., become and are the records of his office. The legislative intent* was that they should be preserved and kept for some useful purpose in connection with the elections of members of Congress. To make them available, *they should be entered, indexed, and made easy of reference;* and for this purpose the law provides a fee of fifteen cents per folio."

Item 21. Entering and indexing special letters of instruction to each supervisor, requiring him to appear before a U. S. Commissioner, take the oath of office, and get his commission, his registry books, and printed copy of instructions, to acknowledge receipt of commission, registry books, and instructions.

No charge was made for drawing these letters of instruction, but only for entering and indexing them. Like services were charged in plaintiff's accounts for 1887, 1888, and 1889, allowed and paid. Charges for like services were allowed in the Dennison case, sub-items 19, 20, and 21.

Item 22. Entering and indexing special reports of supervisors of the proceedings of the first meeting of the board of registry, &c. This is the same as item 9, and is claimed on the same authorities. *Dennison* v. *United States, ante*, sub-item 22.

Item 23. Entering and indexing special reports of supervisors of election at the close of the third meeting, giving: 1, total registration for October 8, 15, 22; 2, whether the lists contained the name or names of any person or persons whose right to vote is honestly doubted; 3, whether the supervisors of election have been obstructed in obtaining information of the right of foreign-born persons to register; 4, irregularities occurring on the part of registry officers during registration.

These reports were important records of the Chief Supervisor's office, and were, accordingly, entered and indexed. Section 2031. *Dennison* v. *United States*, sub-items 22 and 23.

Item 24. Entering and indexing special reports of supervisors by names, election districts, wards, amounts claimed for services.

These reports were records of the Chief Supervisor's office. The same charge was allowed in appellant's accounts for 1887, 1888, 1889, and 1890. Dennison's case, sub-item 25.

Item 25. Entering and indexing reports signed by the Chief Supervisor, required by the court under section 2026, on presentation of applications for the appointment of supervisors of election, which reports furnished information to the Judge in respect to the qualifications of each applicant. This is in all respects like item 11.

Item 26. Making, entering, and indexing records, such as mail lists, containing supervisors' names and P. O. address with columns for checking matter sent out by mail,

and also receiving lists with columns for checking receipt of reports, returns, lists, etc., as received from supervisors.

The same charges were allowed in appellant's accounts for 1887, 1888, 1889, and even 1890. Same authorities as above.

Item 27. Entering and indexing special letters of instruction to supervisors notifying them of the number of days allowed, amount allowed, with directions as to the manner of verifying their claims. This is the same as item 13. Same authorities.

Item 28. Drawing oaths of office of supervisors of election, 1892. This is the same as item 15, election of 1890.

(Items Disallowed in Account for 1888.)

Item 29. Receiving and filing reports of supervisors made under section 2020.

These were reports made by five supervisors that they had been molested in the discharge of their duties. They made the reports in accordance with section 2020. It was the Chief Supervisor's duty to receive and file them. Section 2026. For filing them section 2021 provided the fee. The court below allowed this item.

Item 30. This is for taking and certifying the depositions and evidence of 46 witnesses in respect to the interference with the supervisors.

Section 2020 provided:

"And upon receiving any such report, the Chief Supervisor, acting both in such capacity and officially as a commissioner of the circuit court, shall forthwith examine into all the facts; and he shall have power to subpœna and compel the attendance before him of any witness, and to administer oaths and take testimony in respect to the charges made; and prior to the assembling of the Congress

for which any such Representative or Delegate was voted for, he shall file with the Clerk of the House of Representatives all evidence by him taken, all information by him obtained, and all reports to him made."

The fee charged for taking and certifying the deposisions was in accordance with section 847—"for taking and certifying depositions to file, twenty cents for each folio." This was also allowed below.

Item 31. Entering and indexing said depositions.

As the depositions became records of the Chief Supervisor's office, and very important records, he entered and indexed them, charging 15 cents a folio, as provided by section 2031.

It was contended by the Comptroller that these depositions had no permanent value, and therefore should not have been entered and indexed; and, further, that as they were sent to the Clerk of the House of Representatives, there was still less reason for entering and indexing them. As was said by Mr. Justice Harlan *In re Coy* (31 Fed. Rep. 794), "they were none the less documents in regard to an election for Representatives in Congress." They related to a criminal offence under section 5511 of the Revised Statutes of the United States. They were therefore very properly entered and indexed as how, otherwise, would the Chief Supervisor have any knowledge of them after sending them to Congress?

4. *What were the records of a Chief Supervisor's office?*

Section 2031, in providing what a Chief Supervisor should be paid for *filing and caring for*, mentions, "return, report, record, document, or other paper." This Court, in the Poinier case, recognized the fact that there were *documents or other papers* which a Chief Supervisor might be *authorized* to file and care for, but which, neverthe-

less, he was not *required* to "preserve and file," and therefore did not constitute such *records* of his office as to warrant their being entered and indexed. The court, in that case, had some difficulty in determining what the appellee meant by "information" in his charge for "*recording* and indexing 105 *informations*," but finally, "from the opinion of the court below and from the brief of the Petitioner," the conclusion was reached that these "informations" were the recommendations of the agents or committees of each political party. The court, thereupon allowed Poinier for filing them, at the same time saying, "there is clearly no necessity for *recording* them," and adding: "it does not follow that every paper which the law authorizes to be filed must therefore be *recorded or copied*. To entitle a document to be recorded it should have some permanent value." There is no charge in the case at bar for *recording*, and, indeed, the Federal election statutes nowhere provided a fee for recording anything.

Section 2026, when prescribing what the Chief Supervisor should receive, preserve, and file, said, specifically, "all oaths of office of supervisors of election, and of all special deputy marshals appointed under the provisions of this Title, and certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise specially directed."

The court will not fail to note the omission from this section of the words "document, or other paper" which are found in section 2031. Section 2026, therefore, designated what were the records of his office which, in the exercise of sound discretion, the Chief Supervisor might enter and index.

The records of a Chief Supervisor's office were those things which were contemplated or made requisite in the performance of his duties by the Federal election laws.

5. *How were the records to be preserved ?*

As has been already shown, the Chief Supervisor was to discharge the duties of his office so long as faithful and capable. (Section 2025). Why was he made a permanent officer and why was he required to file and preserve the records contemplated or made requisite by law? Can there be any doubt that the legislative pupose was to secure for use in future elections and in contested election cases, and otherwise, the benefit of the experience and information acquired, with much labor and expense, at prior elections? How were these records to be preserved? Certainly not by storing them in boxes. Some orderly method of preservation was essential. What should that be? The statutes clearly show it when they provide a fee for filing the original records and another fee for entering (*i. e.*, transcribing the information which they contained, in durable books) and indexing them.

Filing alone would not suffice. Records which are merely filed are apt to be mislaid and lost. To insure their preservation, they must be entered in durable books. Nor are entering and filing enough. To make the information contained in the records available and convenient for handling, it must be indexed. Particularly was this so in a densely settled part of the country where there was the most urgent necessity for guarding and scrutinizing, and where the documents which the election law contemplated were both numerous and voluminous. It will be observed that the services which these laws required of a Chief Supervisor were not limited to those specified in the fee bill. (Sec. 2031). He did far more than merely file, enter, and index papers, affix seals and prepare and transmit reports to Congress. (Sec. 2020).

1. Prior to an election, he had to carefully examine the entries and indexes of the last preceding Congressional election.

This was necessary, as the records and indexes in the Chief Supervisor's office of those who registered and voted at the previous election had to be examined, to enable the Chief Supervisor to determine that the verification required by section 2026 was necessary.

2. To make an examination of the records of the courts as to those who were naturalized during the intervening two years, and as to those who were naturalized during the months immediately preceding the Congressional election. (Secs. 2004 and 5426).

3. Lists of all persons so naturalized, with their residences, the country to which they renounced their allegiance, and the names and residences of their witnesses.

4. Preparation of application blanks, and notices that the same could be obtained by parties willing and qualified to serve as supervisors of elections.

5. Preparation of books for the use of supervisors at the places of registry, in which to return the registration, and poll-lists for election day.

6. Preparing blanks for the return of the supervisors' canvass of the votes.

7. The receipt and examination of applications received, making inquiries as to the qualifications of applicants, to make a proper selection therefrom.

8. Securing copies of the list of inspectors and poll-clerks, appointed under the State law.

9. Furnishing a list of the places of registration in twelve cities.

10. Lists of places where the polls were to be held, which frequently differed from those where the registry had been carried on.

11. Making lists of persons who were rejected by the State authorities as inspectors and poll-clerks, so that no one considered by them as incompetent should be thrust upon the national authorities.

12. The applications received were again gone over in the light of all the information obtained, and presented to the court, and the names of those whom the Chief Supervisor believed to be the most competent were made out from time to time, and recommended to the court for appointment.

13. Commissions for the supervisors were filled out and taken to the Judge and his signature to each obtained. They were then taken to the Circuit Court Clerk, who affixed the seal of the court, and forwarded them to the Chief Supervisor.

14. Swearing in and commissioning supervisors.

15. Preparing instructions for supervisors on registration days.

Section 2016 imposed a duty on the supervisors appointed for each election district "to make, when required, the lists, or either of them, provided for in section two thousand and twenty-six." And section 5521 imposed severe criminal punishment upon supervisors who neglected or refused, without good cause, to perform and discharge fully the duties, obligations, and requirements of their office.

16. Making copies of the election laws—national and State—with amendments to State laws, if any, and distributing the same to the supervisors (Secs. 2004, 2007).

17. Preparing and furnishing books for the verification of the registry.

18. Preparing and sending notices to persons appointed by the court as supervisors, informing them of their appointment, and when they should attend to be sworn in.

19. Notices to supervisors of their removal from office.

20. Distributing supervisors' books, in which they were to keep and make returns, and collecting the same on the days following registration.

21. Comparing the returns with the entries and indexes of the preceding Congressional election.

22. Distributing, on election day, the blanks for the returns of the canvass of the votes.

23. Tabulating the same.

24. Preparing blanks on which the supervisors were required to report the days they served.

25. Preparing tabular pay-rolls and certifying the same to the U. S. Marshal, to the end that the supervisors might be paid.

26. Filing the supervisors' returns of the registry and their poll-lists; also their returns of the canvass of the votes cast.

27. Drawing oaths of office of supervisors and deputy marshals.

28. To see that the marshal and commissioners forwarded the papers and reports which, by section 2027, they were required to send to the Chief Supervisor for preservation and filing.

The services were utterly beyond the power of any one man to perform unaided, and in order to accomplish what was required of him, the Chief Supervisor was necessarily compelled to employ clerks and aids, to rent offices, and to pay therefor out of his own pocket.

6. *Payment for services.*

Section 2031 provided—

"There shall be allowed and paid to the Chief Supervisor for his services as such officer, the following compensation * * * *for entering and indexing the records of his office*, 15 *cents per folio*, * * * and the fees of the Chief Supervisor *shall be paid* at the Treasury of the United States." * * *

The performance of the services so contemplated created

a contract obligation on the part of the United States to pay therefor at the rate specified. That this would be so between private parties, that it must be so between the Government and its own officer, cannot be disputed. Hence the suggestion by the Comptroller that there was no *necessity* for this service, or for that, does not touch the merits of the case. If the reports to the Judge, the returns and reports of the supervisors, the instructions to the supervisors, the oaths of the supervisors, and the oaths of the deputy marshals were records of the Chief Supervisor's office, the Government has promised to pay fifteen cents per folio for entering and indexing them. If they were not records, the Government has not promised to pay anything. These two alternatives cover the whole ground, and they exclude utterly the question whether, assuming the reports, returns, instructions, and oaths to be records, it was expedient or necessary to enter and index them.

The Government said to the Chief Supervisor, in the broadest and most general terms, and in the most authentic way, by a statute: "If you enter and index the records of your office, you shall be paid therefor fifteen cents per folio." The Chief Supervisor, thereupon, entered and indexed the reports, returns, instructions and oaths, and claimed 15 cents per folio therefor. If these reports, &c., were records, the Government's liability on its contract is clear, and the only open question is whether they were records or not.

It has been clearly shown that the law made it the duty of the Chief Supervisor to preserve and file them. The District Court, approving the account, held them to be necessary to the proper conduct of the administration of the election laws, and records of the Chief Supervisor's office. What more was needed to make them records

of his office? If they were not records, what document can be named which is a record? And being records of his office the Chief Supervisor entered and indexed them.

6. *The law vested the Chief Supervisor with discretion.*

The law gave him discretion in providing that he should receive, preserve and file oaths of office, certificates, returns, reports and records of every kind and nature contemplated or made requisite by the provisions thereof. Even if the counsel on the other side should be of the opinion that the entering and indexing of some of these returns, reports, &c., were not necessary, it would nevertheless remain true that the Chief Supervisor, thinking them necessary, did require them, that the supervisors did make them, and that the Chief Supervisor did receive and file them. That alone made them records of his office, even though the Court may think that the Chief Supervisor exercised his discretion in an erroneous manner. It would be as reasonable to say that judgment rolls in courts of law containing errors are not judicial records as to say that the reports of supervisors are not records of the Chief Supervisor's office because he erred in requiring the supervisors to make them.

But, however that may be, it is a settled principle that when the law has vested an officer with authority to exercise discretion in the discharge of his duties, the courts have no right to question acts honestly done in pursuance of the authority so vested. *Lynde* v. *The County*, 16 Wall. 13; *United States* v. *Arrendondo*, 6 Pet. 729; *Decatur* v. *Paulding*, 14 Pet. 497; *Butterworth* v. *Hoe*, 112 U. S. 50.

7. *The approval by the court and its conclusiveness.*

In the matters of entering and indexing the records of his office, as has been shown, the Chief Supervisor exercised his discretion, and the District Court approved the

exercise of that discretion. In *United States* v. *Barber* (140 U. S. 179) this Court said:

"Under the case of *United States* v. *Jones*, 134 U. S. 483, the approval by the court of his accounts is conclusive that his discretion was properly exercised. If the officers of the Treasury were at liberty to question the propriety of every charge in all cases, the approval of the courts would be an idle ceremony. We can give no less weight to such approval than to say that it covers all matters within the discretion of the officer rendering the account."

8. *Contemporaneous construction and long continued practice.*

The accounting officers of the Treasury have allowed charges of the same character as those involved in this case. Their construction of the law in favor of the right to charge these fees is entitled to great weight.

Edwards v. *Darby*, 12 Wheat. 210; *United States* v. *The State Bank of North Carolina*, 6 Pet. 29; *United States* v. *McDaniel*, 7 Pet. 1; *United States* v. *Dickson*, 15 Pet. 141; *United States* v. *Gilmore*, 8 Wall. 330; *United States* v. *Alexander*, 12 Wall. 177; *Peabody* v. *Stark*, 16 Wall. 240; *Smythe* v. *Fiske*, 23 Wall. 374; *United States* v. *Moore*, 95 U. S. 760; *United States* v. *Pugh*, 99 U. S. 265; *Hahn* v. *United States*, 107 U. S. 402, 406; *Five Per Cent. Cases*, 110 U. S. 471; *Brown* v. *United States*, 113 U. S. 568; *United States* v. *Philbrick*, 120 U. S. 152.

If there were any doubt as to the propriety of the allowance of the fees, such doubt, in view of the long continued practice, *should be resolved against* the Government.

United States v. *McDermott*, 140 U. S. 154.

9. *The difference between the case at bar and the Sherman case.*

The radical difference between this case and that of Sherman, decided in 155 U. S. 673, is that Sherman's records had no connection whatever with the election to which they purported to relate. As found by the Court of Claims, Sherman's index of the election of 1888 "was not in fact used until after the Congressional election of 1890." That court also found that a "similar index of the election returns of 1890 was made out before the election of 1892, and *was used in that election, and has been paid for.*" Upon the findings, the Court of Claims decided that—

"The services which form the cause of action in this suit *not having been rendered at the proper time*, to wit, before the Congressional election of 1890, and the defendants having, therefore, derived no benefit from them in that election, they must be deemed voluntary, and for them the claimant should not recover."

The services were, therefore, *unofficial*. Furthermore, the Judge to whom the account was presented disallowed it.

Said this Court:

"Assuming that section 2026 vests him (the Chief Supervisor) with discretion to require of the supervisors lists of the voters when in his opinion it is necessary, and that section 2031 authorizes and perhaps requires him to file and care for such lists, there is certainly no requirement *for making a copy* of such lists. The entering and indexing the records of his office for which he is entitled to receive 15 cents per folio, would evidently be complied with by his filing such returns, *and indexing them* in the name of the supervisor making the returns."

While thus declaring what would have been a proper service and a statutory charge, the Court was confronted

with the facts that Sherman's index had not been made at the proper time ; that he charged for *copying* lists of voters, and that his account had been disapproved by the Circuit Judge to whom it was presented, and hence the conclusion that the index was "of no more value than a directory for a certain year issued after a directory for a subsequent year has been published and put upon the market."

The Court also held that though there were decisions of the Court of Claims which upheld *charges* of the description of Sherman's—the Dennison and Allen cases—yet the *service* was not one within the spirit or the letter of the statute—a service preformed more than two years after the election to which it related.

In the case at bar, the facts are all the other way. The services, as found by the District Court, were performed at the proper time, were necessary and in accordance with the statutes, and the charges were approved, after an examination, in open court.

10. *The Government is estopped by a former adjudication between the same parties, litigating the same subject-matters.*

Charles M. Dennison was United States Commissioner and Chief Supervisor of Elections in and for the northern district of New York from March, 1871, and served as such until the act of Congress creating the office of Chief Supervisor of Elections was repealed. He performed services às such officer at the Congressional elections held in the State of New York from 1872 to 1892, inclusive. In 1887 he brought an action (No. 15,775) in the United States Court of Claims against the United States to recover for various items of service rendered as such officer that had been theretofore disallowed by the accounting

officers of the Government. The issues tried were: 1. The performance of the services charged for. 2. Were such services necessary?

The Government took the position that the services claimed for were unnecessary, and for that reason the Government was not liable. Much evidence was given. The claimant was examined as to the necessity of performing the services claimed for. Supervisor Davenport and others were called to show the services claimed for were necessary in the discharge of the official duties of a Chief Supervisor. The court found for the claimant on both issues, and judgment was rendered against the United States on the 21st day of April, 1890, for $6,998.68 in favor of the claimant.

No appeal was taken from that judgment, and it stands to-day unreversed and unmodified.

In 1893 the same claimant, Charles M. Dennison, brought a second action (No. 17,936) in the Court of Claims against the United States to recover for subsequent official services performed, under the same statute, at the Congressional elections held in the State of New York in 1888, 1890, and 1892, and which had been theretofore disallowed by the accounting officers of the Government, in all amounting to $6,034.45. The services thus disallowed were in all respects like those set forth in the first action, the only difference being that they were performed at Congressional elections held subsequent to bringing the first action. The issues tried in the second action and the evidence given on such trial were the same as in the first action.

The Court of Claims in the second action gave judgment for the claimant for only $678.10, and disallowed all the balance of the claim. The parties in both actions were identical.

From this second judgment the claimant appealed to this Court.

First. We say that the trial of the first action was an adjudication upon the facts and the law, by a court of competent jurisdiction, and estopped the Government from asserting, in the second action, that the services claimed for were unnecessary.

Second. That the court in the first action adjudicated and gave construction to section 2031 of the Revised Statutes of the United States, under which Dennison claimed compensation; and the claimant, relying upon such adjudication, and having continued to perform like services, the Government, upon general principles, is estopped from denying it liability.

The case at bar falls so fully within the rules laid down in the Duchess of Kingston's case as to preclude all argument, viz:

"That the judgment of a court of concurrent jurisdiction directly on the point, is as a plea, a bar, or, as evidence conclusive, between the same parties upon the same matter directly in question in another cause."

And is cited and approved in *Gardner* v. *Buckbee*, 3 Cowen (N. Y.) 120.

The case of *Gardner* v. *Buckbee* is directly in point, and has been cited and approved in *Bouchaud* v. *Dias*, 3 Den. (N. Y.) 238.

Both of the cases, 3 Cowen and 3 Denio, were second suits brought upon separate instruments, arising out of transactions that had been previously litigated in the courts between the same parties.

In *Embury* v. *Connor*, 3 N. Y. Ct. of App. 511, this rule was laid down: "That the judgment or decree of a court possessing competent jurisdiction is, as a general rule,

final, not only as to the subject-matter thereby actually determined, but as to every other matter which the parties might litigate in the cause, and which they might have had decided, can admit of no doubt." And the court cites: *Voorhees* v. *The Bank of the United States*, 10 Pet. 449; *Le Guen* v. *Gouverneur*, 1 John. Cas. 436, 2 ed., note a, p. 492; 2 Smith's L. Cas., tit. Estoppel, p. 455, note; *Outram* v. *Morewood*, 3 East, 346; *Etheridge* v. *Osborn*, 12 Wend. 399; Duchess of Kingston's case, 20 State Trials, 355; 1 Phil. Ev. 223; *Doty* v. *Brown*, 4th N. Y. Ct. of App. 71.

In *White* v. *Coatsworth*, 6 N. Y. Ct. of App. 137, the court held that the judgment of a court of competent jurisdiction upon a point litigated between the parties is conclusive in all subsequent controversies where the same point comes again in question between the same parties.

In *Lorillard* v. *Clyde*, 122 N. Y. Ct. of App. 41, the doctrine was laid down:

"A judgment rendered on the merits is co-extensive with the issues upon which it is founded, and is conclusive between the parties thereto, not only as to the matters actually proved and submitted for decison, but also as to every other matter directly at issue by the pleadings which the defeated party might have litigated."

It was held in *Henck* v. *Barnes*, 84 Hun, (N. Y.) 546, that a judgment is conclusive as to the law as well as facts, citing *Bouchaud* v. *Dias*, 3 Denio, 238, *supra*; *Gould* v. *Evansville, etc., R. R. Co.*, 91 U. S. 526. The same doctrine of estoppel is held in *Bryan* v. *Kennett*, 113 U. S. 179. In *Hornbuckle* v. *Stafford*, 111 U. S. 389, it was held (p. 394) that a decree which remains in full force is not open to contest in a subsequent suit between the same parties.

"If one person is induced to do an act prejudicial to himself in consequence of the acts or declarations of another, on which he had a right to rely, equity will enjoin the latter from asserting his legal rights against the tenor of such acts or declarations."

Branson v. *Wirth*, 17 Wall. 32.

"The vital principle is that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted."

Dickerson v. *Colgrove*, 100 U. S. 578.

"Where a person tacitly encourages an act to be done, he cannot afterwards exercise his legal right in opposition to such consent, if his conduct or acts of encouragement induced the other party to change his position, so that he will be pecuniarily prejudiced." * * *

Swain v. *Seamens*, 9 Wall. 254.

"Any agreement, declaration, of course of action, on the part of an insurance company, which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred, followed by due conformity on his part, will and ought to estop the company from insisting upon the forfeiture."

Insurance Co. v. *Eggleston*, 96 U. S. 572.

Participators in a transaction which is conceded to have been fair, and was supposed to be lawful at the time, and upon the faith of which numberless transactions in business have been entered into, are estopped from questioning its validity, and repudiating the character they assumed in the transaction.

Branch v. *Jessup*, 106 U. S. 468.

While it is not claimed that the Government is estopped as against like claims presented by some other U. S. Commissioner and Chief Supervisor, it is broadly claimed that

the judgment of the Court of Claims of April, 1890, in favor of the claimant, against the United States, unreversed and unmodified, is an absolute bar to any defense set up in the second action that such services were unnecessarily performed or that the Government is not liable therefor. That judgment concluded the subject on which it was rendered. It pronounced the law, and as Chief Justice Marshall said in *Ex parte Watkins*, (3 Pet. 193), "it is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact by deciding it."

It is submitted that, the appellant being entitled to the fees which were disallowed by the Court of Claims, the judgment as to those items should be reversed.

RICH'D RANDOLPH McMAHON,
Counsel for Appellant.

APPELLEE'S BRIEF

No. 84.

Brf. of Atty. Gen.l (Prodt.

for Appellee.

Filed Oct. 25, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

CHARLES M. DENNISON, APPELLANT,
v.
THE UNITED STATES, APPELLEE. } No. 84.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

CHARLES M. DENNISON, APPELLANT,
v.
THE UNITED STATES, APPELLEE. } No. 84.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLEE.

STATEMENT.

The appellant brought suit in the court below for the recovery of certain fees alleged to have been earned by him as chief supervisor of elections for the northern judicial district of the State of New York at and in connection with three general elections for Representatives in Congress, held respectively in the years 1888, 1890, and 1892, payment of the fees having been disallowed by the accounting officers of the Treasury Department, as alleged

in the petition. The court below disallowed all the items set forth in the Findings of Fact except those mentioned in the Conclusion of Law. (R., 20.)

Counsel for appellant makes no formal assignment of errors. He merely says, at the end of his brief, that the judgment should be reversed as to the disallowed items; and although we have not taken an appeal, he argues that the allowed items should be retained. He does this presumably from the precedent in the case of *United States* v. *Mosby* (133 U. S., 273). Therefore we shall consider the allowed items as in issue here, so far as we have objections to their allowance.

Counsel for appellant discusses the items of the Findings of Fact in the numerical order in which they are there presented. But as many of these items are for like services, we think the issue will be more clearly and concisely presented to the court by classifying them, as near as may be, according to the nature of the service for which the fees are charged, into five classes, retaining the numbers of the items in the findings and in appellant's brief, as follows:

CLASS I.

CHARGES FOR SERVICES IN THE MATTER OF THE APPOINTMENT OF SUPERVISORS.

Item 5 (R., 14):

Making copies of applications from different cities for appointment as supervisors of election, to be annexed to the reports made to the judge, 1,950 folios, at 15 cents each $279. 50

[This charge is for the election of 1890.]

Item 18 (R., 17):

Entering and indexing applications of persons applying to be appointed supervisors of election by entering the date, name of each applicant, election district, ward, city, residence by street and number, and political affinity, subsequently adding the date of commission, 1,913 folios, at 15 cents per folio..... $286. 95

[This charge is for the election of 1892.]

Item 3 (R., 14):

Drafting and signing reports to the judge, which reports furnished information with respect to the applications and appointments of supervisors, 484 folios, at 15 cents a folio..... 72. 60

The United States circuit court required these reports to be in writing, signed by the chief supervisor, and filed in the clerk's office.

[This item was allowed by the Court of Claims. It was charged for the election of 1890.]

Item 16 (R., 17):

Drafting and signing 108 reports on presentation of applications for the appointment of supervisors of election, which reports furnished information to the judge in respect to the qualifications of each applicant, 674 folios, at 15 cents per folio..... 100. 10

[This item is similar to item 3 above. It was therefore allowed by the Court of Claims, the charge being for the election of 1892.]

Item 11 (R., 15):

Entering and indexing reports on presentation of applications for the appointment of supervisors of election, which reports furnished information to the judge in respect to the

qualifications of each applicant, with copies of applications annexed, 2,373 folios, at 15 cents each $355.95

[This charge is for the election of 1890.]

Item 25 (*R., 18*):

Entering and indexing reports signed by the chief supervisor on presentation of applications for the appointment of supervisors of election, which reports furnished information to the judge in respect to the qualifications of each applicant, 674 folios, at 15 cents per folio 101.10

[This charge is for the election of 1892. The item is similar to Item 11, above.]

Item 15 (*R., 16*). This item is set forth in Finding IV, as follows:

In the month of October, 1890, the claimant drew 1,368 oaths of office of supervisors of election duly appointed in the northern district of New York to serve at the general election to be held November 4, 1890; two folios each. His account for the same, duly verified by his oath, was submitted to the court, examined, and approved for $429.75. Said account so approved was presented to the accounting officers of the Treasury for payment; was allowed by the First Auditor, but the First Comptroller, by Treasury statement No. 143761, refused payment of $205.20, as follows:

Account of Charles M. Dennison, U. S. comm'r for the northern district of New York, for fees from July 1, 1890, to June 30, 1891:

Amount claimed	$429.75
Amount found due by Treasury statement	224.55
Difference	205.20

One folio is sufficient for drawing supervisor's oaths of office. The excess is disallowed, $205.20.

Each oath contained exactly 160 words. The following is the form:

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Andrew Shaw, of the city of Albany, N. Y., having been appointed one of the supervisors of election in and for the Second election district, Fifth Ward of said city, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; and I do further swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

Item 28 (R., 19). This item is charged for the election of 1892, and is similar to the preceding item, as shown by Finding VII:

In the month of October, 1892, the claimant drew 1,339 oaths of office of supervisors of election duly appointed to serve at the general election to be held November 8, 1892, two folios each. Said oaths were subscribed to by said supervisors, and are now on file in the claimant's office. Claimant's account for said

service, verified by his oath, was submitted to and approved by the United States district court as aforesaid. When the account was presented to the accounting officers of the Treasury for allowance and payment, they disallowed the following:

For supervisors' oath of office 1 folio is sufficient. The excess is disallowed..... $200.85

Item 19 (R., 18):

Entering and indexing oaths of supervisors of election, 2,560 folios, at 15 cents a folio, $384. Of this the Comptroller allowed 1,280 folios and disallowed 1,280 folios..... 192.00

[This charge is for the election of 1892.]

Item 7 (R., 15):

Entering and indexing special letters of instruction to each supervisor, signed by the chief supervisor, containing, 1, notice of his appointment, naming his district, ward, and city; 2, that commissions and blank oaths of office had been forwarded to —— ——, U. S. commissioner, upon whom they must call to take oath of office and get commission; 3, that with commission each supervisor would find blank registry books, printed copy of general instructions; 4, requiring supervisors to acknowledge receipt of commission, registry books, and instructions, 2,890 folios, at 15 cents per folio..... 433.50

[This charge is for the election of 1890.]

Item 21 (R., 18):

Entering and indexing special letters of instruction to supervisors, signed by the chief supervisor, requiring and directing each supervisor to appear before a U. S. commissioner,

take the oath of office, and get his commission, his registry books, and printed copy of general instructions, to acknowledge receipt of commission, registry books, and instructions, 1,339 folios, at 15 cents each $200. 85

[This charge is for the election of 1892.]

Total of Class I 2, 428. 00
Less items 3 and 16, allowed by Court of Claims 172. 70

Amount disallowed by Court of Claims . 2, 255. 30

CLASS II.

CHARGES FOR SERVICES IN THE MATTER OF INSTRUCTING SUPERVISORS AS TO THEIR DUTIES.

Item 4 (R., 14):

Drawing instructions to supervisors relative to their duties, 106 folios, at 15 cents each $15. 90

It is not shown that the instructions were not printed in the form of a circular.

[Election of 1890.]

Item 6 (R., 14):

Drawing 76 special orders to supervisors requiring them to verify the registry lists, under section 2026, 152 folios, at 15 cents each 22. 80

[Election of 1890. This item was allowed by the Court of Claims.]

Item 8 (R., 15):

Entering and indexing special letters of instruction to supervisors, signed by the chief supervisor, and enclosing blank report to be made for returning proceedings at first meeting of the board of registry, with special

directions as to answering interrogatories and when to make report; each letter charged as a folio, 1,368 folios, at 15 cents each.... $205. 20

[Election of 1890.]

Item 10 (R., 15):

Entering and indexing special letters of instruction to supervisors, signed by the chief supervisor, enclosing two blanks—one for a return of conduct of board of registry on completion of canvass, and requiring a return of the vote cast for Representatives in Congress, the other requiring each supervisor to report the number of days served by him, 1,368 folios, at 15 cents each..... 205. 20

[Election of 1890.]

Item 14 (R., 16):

Entering and indexing special orders requiring supervisors to verify their lists, 152 folios, at 15 cents each..... 22. 80

[Election of 1890.]

Total of Class II..... 471. 90
Less Item 6 allowed by Court of Claims..... 22. 80

Amount disallowed by Court of Claims. 449. 10

CLASS III.

CHARGES FOR SERVICES IN THE MATTER OF PAYMENT OF PER DIEM COMPENSATION TO SUPERVISORS.

Item 24 (R., 18):

Entering and indexing special reports of supervisors by names, election districts, wards, and per diems claimed, following after audit, with

per diems allowed and amount certified due to each, 1,166 folios, at 15 cents per folio... $174.90

[Election of 1890.]

Item 13 (R., 15):

Entering and indexing special letters of instruction to supervisors, notifying them of the number of days allowed, amount due, with directions as to the manner of verifying their claims, 1,368 folios, at 15 cents each..... 205.20

[Election of 1890.]

Item 27 (R., 19):

Entering and indexing official special letters of instruction to supervisors, signed by the chief supervisor, certifying to each supervisor the number of days allowed him, and directing him to go before —— ——, U. S. commissioner, sign the pay roll and take the oath verifying his claim, 1,166 folios, at 15 cents per folio..... 174.90

[Election of 1892.]

Item 12 (R., 15):

Entering and indexing pay rolls of supervisors of election and certifying the same to the U. S. marshal, 513 folios, at 15 cents each.. 76.95

[Election of 1890.]

Item 17 (R., 17):

Auditing claims of and drawing the pay rolls of the supervisors of election for their claims for services and certifying the same by separate cities to A. E. Baxter, U. S. marshal, for payment, as per directions of the Attorney-General, as follows: Albany, 87 folios; Auburn, 30 folios; Binghamton, 47 folios; Buffalo, 164 folios; Cohoes, 24 folios; Elmira,

31 folios; Oswego, 30 folios; Schenectady, 23 folios; Rochester, 100 folios; Syracuse, 110 folios; Troy, 56 folios; Utica, 43 folios; Watervliet, 28 folios—773 folios, at 15 cents. The comptroller disallowed 531 folios, at 15 cents, and 13 certificates, at 15 cents..... $81.60

[Election of 1892.]

Total of Class III..... 709.65

[Disallowed by Court of Claims.]

Class IV.

CHARGES FOR SERVICES IN THE MATTER OF REGISTRATION AND THE CONDUCT OF ELECTIONS.

Item 1 (R., 14):

Filing and caring for 1,274 special reports of supervisors of election of the proceedings of the first meeting of the board of registry, giving, (1) names of inspectors composing board of registry; (2) the manner in which the board organized; (3) total number registered on first registration day; (4) whether or not any person registered illegally; (5) whether any difficulty occurred in obtaining answers as to whether applicant was native or foreign born, and, if foreign born, when and in what court naturalized; (6) whether or not the supervisors of election were allowed to discharge their official duties without restraint or interference, at 10 cents each $127.40

[Election of 1890. This item was allowed by the Court of Claims.]

Item 9 (R., 15):

Entering and indexing special reports of supervisors of election of the proceedings of the first meeting of the board of registry, giving, 1, names of inspectors composing board of registry; 2, the manner in which the board was organized; 3, total number registered on first registration day: 4, whether or not any person registered illegally; 5, whether any difficulty occurred in obtaining answers as to whether applicant was native or foreign born, and, if foreign born, when and in what court naturalized; 6, whether or not the supervisors of election were allowed to discharge their official duties without restraint or interference; 3,822 folios, at 15 cents each $573.30

[Election of 1890.]

Item 22 (R., 18):

Entering and indexing special reports of supervisors of election of the proceedings of the first meeting of the board of registry, giving, 1, names of inspectors composing board of registry; 2, the manner in which the board organized; 3, total number registered on first registration day; 4, illegal registrations; 5, whether any difficulty occurred in obtaining answers as to whether applicant was native or of foreign birth, and, if foreign born, when and in what court naturalized; 6, whether or not the supervisors of election were allowed to discharge their official duties without restraint or interference, 2,320 folios, at 15 cents per folio..... 348.00

[Election of 1892.]

Item 23 (R., 18):

Entering and indexing special reports of supervisors of election at the close of the third meeting, giving, 1, total registration for October 8, 15, 22; 2, whether the lists contained the name or names of any person or persons whose right to vote is honestly doubted; 3, whether the supervisors of election have been obstructed in obtaining information of the right of foreign-born persons to register; 4, irregularities occurring on the part of registry officers during registration—2,252 folios, at 15 cents per folio..... $337.80

[Election of 1892.]

Item 2 (R., 14):

Filing and caring for preliminary and final registry books, required by the chief supervisor, at 10 cents each..... 124.90

The charge was for filing and caring for 2,617 books, at 10 cents, $261.70. Of this the Comptroller allowed $136.80 and disallowed $124.90.

[Election of 1892. This item was allowed by the Court of Claims.]

Total of Class IV.....1,511.40
Less items 1 and 2, allowed by Court of Claims. 252.30

Amount disallowed by Court of Claims. 1,259.10

Class V.

MISCELLANEOUS CHARGES.

Item 20 (R., 18):

Entering and indexing oaths of special deputy marshals, 4,264 folios, at 15 cents, $639.60.

Of this the Comptroller allowed 1,066 folios and disallowed 3,198 folios.....	$479.70
[Election of 1892.]	
Item 26 (R., 19):	
Making, entering, and indexing records, such as mail lists, containing supervisors' names and post-office address, with columns for checking matter sent out by mail, and also receiving lists, with columns for checking receipt of reports, returns, lists, etc., as received from supervisors, 175 folios, at 15 cents per folio.....	26.25
[Election of 1892.]	
Item 29 (R., 20):	
Receiving and filing reports of Supervisors Rynders, Halligan, Nash, Somes, and Manns, 10 cents each.....	80.50
Item 30 (R., 20):	
November 23 and 24, December 17 and 18, 1888, and April 1, 1889, to hearing, taking, and certifying the depositions and evidence of 46 witnesses herein; in all, 1,149 folios, at 20 cents per folio.....	229.80
Item 31 (R., 20):	
Entering and indexing said depositions and evidence as records of chief supervisor's office, 1,149 folios, at 15 cents each.....	172.35
[Election of 1888. Items 29 and 30 were allowed by the Court of Claims.]	
Total of Class V.....	908.60
Less items 29 and 30, allowed by Court of Claims.....	230.30
Amount disallowed by Court of Claims.	678.30

RECAPITULATION.

	Allowed.	Disallowed.	Total.
Items Class I	$2,428.00	$172.70	$2,255.30
Items Class II	471.90	22.80	449.10
Items Class III	709.65	.....	709.65
Items Class IV	1,511.40	252.30	1,259.10
Items Class V	908.60	230.30	678.30
Total	6,029.55	678.10	5,351.45

BRIEF OF ARGUMENT.

The office of chief supervisor of elections was abolished by an act "to repeal all statutes relating to supervisors of elections and special deputy marshals, and for other purposes," approved February 8, 1894 (28 Stat. L., 36.)

Section 2031 of the Revised Statutes prescribed the compensation of the chief supervisor as follows:

> (1) For filing and caring for every return, report, record, document, or other papers required to be filed by him under any of the preceding provisions, ten cents.
>
> (2) For affixing a seal to any paper, record, report, or instrument, twenty cents.
>
> (3) For entering and indexing the records of his office, fifteen cents per folio.
>
> (4) For arranging and transmitting to Congress, as provided for in section two thousand and twenty, any report, statement, record, return, or examination, for each folio fifteen cents; and for any copy thereof, or of any paper on file, a like sum.

The only question at issue here is the following:

Were the services set forth in the findings so necessary as to bind the Government to pay for them if the charges therefor are authorized by law?

Counsel for appellant argues that the law vested in the chief supervisor the sole discretion as to the necessity for the services; that the approval of his accounts by the United States court, as prescribed in the act of February 22, 1875, section 1 (18 Stat. L., 333), for United States commissioners' accounts, is conclusive as to the necessity for the services; and that the former practice of the accounting officers and the decision of the Court of Claims in *Dennison* v. *United States*, on April 21, 1890 (25 C. Cls. R., 304), should operate as an estoppel against the disallowance of the present claim.

As to the officer's discretion, our answer is that it is not so unlimited as to permit him to charge the Treasury of the United States with fees for obviously unnecessary work. This court has so held in similar cases, to which we shall refer below.

As to the effect of the approval of the accounts by the circuit or district court, according to the provisions of the above-cited act, counsel for appellant cites *United States* v. *Barber*, 140 U. S., 177, and *United States* v. *Jones*, 134 U. S., 483.

There is a distinction between these cases and the case at bar. In the former the officers were commissioners of the circuit court *acting as committing magistrates*, and to that extent exercising judicial powers. In the case at bar the officer was acting only in an executive capacity,

and, as will be seen in several such cases, this court has disallowed charges for services on the ground that they were not necessary, notwithstanding the approval of the circuit or district court on the accounts in suit. For example, in *United States* v. *Poinier*, 140 U. S., 160 (a chief supervisor's case), this court disallowed an item for recording [entering] and indexing information furnished the judge under section 2026 of the Revised Statutes, and an item for recording [entering] the appointments of 1,008 supervisors of election, as charges for unnecessary services.

In *United States* v. *McCandless* (147 U. S., 692) this court rejected items of charges in the clerk's approved accounts for making copies, certificates, and seals, in the absence of a finding that the service was required by the practice of the Department.

In *United States* v. *Taylor* (*ib.*, 695) the same ruling was repeated, and the court disallowed as a useless expense an approved item of $119.80, being the clerk's charge for filing separate orders of the district attorney discharging witnesses from attendance at court, at 10 cents each.

In *United States* v. *King* (*ib.*, 676), on a like item, the court rejected the charge of the clerk, although it appeared that the services for which he claimed the fees were rendered according to the practice of the court in his district.

Furthermore, we respectfully suggest that the ruling in Jones's Case and Barber's Case, above cited, appears to have been modified to some extent by the later case of *United States* v. *Hall* (147 U. S., 691), wherein it was held by this court that the burden of proof as to the necessity of taking separate acknowledgments of the

accused and his sureties in a criminal cause before a commissioner of the circuit court was upon the plaintiff, notwithstanding the commissioner's account had been approved by the circuit court.

Another objection to the effect of the approval of the court on the accounts in suit is that there is, to say the least, a reasonable doubt as to whether the act of February 22, 1875, above cited, applies to the accounts of chief supervisors of elections; certainly these officers are not mentioned in that statute, although their offices were created in the year 1871 (Rev. Stat., 2025), and were made distinct from the office of circuit court commissioner. Besides this objection the statute expressly says:

> Nothing contained in this act shall be deemed in any wise to diminish or affect the right of revision of the accounts to which this act applies by the accounting officers of the Treasury, as exercised under the laws now in force.

It leaves the accounts subject to the scrutiny and revision applicable to all other accounts adjusted at the Treasury Department, and this being so, it must necessarily be inferred that Congress did not intend that the approval of the circuit or district court thereon should be *conclusive* on the Court of Claims as to the necessity for performing the services therein charged for.

Passing upon a similar statute, that distinguished jurist, Mr. Justice Woodbury, who had been for several years Secretary of the Treasury before his elevation to the bench of this court, said:

> The decision of a court when proper parties, as now, are before it and contest an item of charge is a

> different matter. It is then a judgment which, in the views of most persons, is entitled to the respect and assent of the Departments so far as to pay the item thus allowed if any suitable appropriation exists therefor. But a certificate of a judge, *ex parte*, in the hurry of the conclusion of a term, to an item that has never been litigated nor argued by opposing counsel surely can make claim to no such binding and decisive weight.

This was in reply to argument and opinions, from a very high source, that the certificate of the judge in favor of the account was conclusive on the Treasury Department. This opinion, we submit, accords with the view of the late Chief Justice Richardson of the Court of Claims in *Waters* v. *United States* (21 C. Cls. R., 30; affirmed by this court in 133 U. S., 208). Referring to the provision of the statute he said:

> This means nothing more than that the approval or disapproval by the court shall not be held to be a judicial act, but shall be regarded merely as a step or process in the executive business of settling accounts, as we held in *Turner's Case* (19 C. Cls. R., 620).

And although the Court of Claims afterwards took a different view of the matter in *Dennison* v. *United States* (25 C. Cls. R., 304), we submit that their subsequent action in the case at bar overruled the former case, as required by the action of this court in the cases above cited, which were decided since the Jones and Barber cases. It is to be observed, further, that the question of the effect of the certificate of approval on the account was not raised in the Jones Case. Counsel for appellant *admitted* that "it

is *prima facie* evidence that the work was done," meaning, of course, that the items of charges correctly set forth the particular services for which the fees were charged. That being admitted, there remained only the question of law as to the right to the fees for such service. Of course, in such a case, as Mr. Justice Lamar said at the end of the opinion of the court, the approval "is *prima facie* evidence of the correctness of the items of that account; and in the absence of clear and unequivocal proof of mistake on the part of the court, it should be conclusive." Not that it should be conclusive of the right to the fees claimed for services so established, for that was the question of law which this court then entertained and will always entertain. When such a question arises in a case, it includes the other law question as to whether the statute contemplates payment of fees for services of no value and wholly unnecessary. As to such services, when fees are charged therefor, this court has already passed its condemnation in these words:

> Any practice which puts the Government to such an expense is burdensome, vexatious, and oppressive. * * * In view of the petty character of these claims, if the clerk be competent, it would seem that the practice usually pursued [in other districts] would sufficiently protect the Government, and would render unnecessary a scheme which seems to have been skillfully devised for the multiplication of fees. (*United States* v. *King*, 147 U. S., 676, 684.)

As to the supposed estoppel because of the *alleged* usage of the accounting officers in formerly allowing such items as are here charged for, and because similar items were allowed by the Court of Claims in the former suit

of this appellant (*Dennison* v. *United States*, 25 C. Cls. R., 304), our answer is that however long standing may have been an erroneous practice by the accounting officers of the Government, it has been well settled by this court that such a practice can not be a precedent for its continuance. (*The Floyd Acceptances*, 7 Wall., 678; 1 C. Cls. R., 270.) Besides, the usage alleged has not been found in the facts. (*Ib.*, 678; *United States* v. *Temple*, 105 U. S., 97, 99.)

As to the former suit the same principle applies. It would be a novel doctrine of law to say that where A pays out money to B which he did not owe, such payment must be regarded as a promise on the part of A to continue paying out money to B that in law or equity he is not bound to pay; or that where A recovers a judgment for services performed by him for B for which B was not liable, he must always thereafter recover for other services performed for B.

"Statutes are not to be wrested from their true meaning, because a diminution of the fees of an office may result from it."

This was said by Mr. Justice Field where fees were paid to an officer without protest or objection and recovered in an action brought therefor. (*Young* v. *Steamship Co.*, 105 U. S., 41, 44.)

The appellant, as the record shows, has already been paid a very large sum of money for a few days' services and all his disbursements have in addition thereto been reimbursed to him. If he has done unnecessary work

in the multiplication of folios and filings, that was a speculation which will not be countenanced here.

Appellee's exceptions to the items are as follows:

ITEMS OF CLASS I.

These are charges for services connected with the appointment of supervisors.

Section 2026 of the Revised Statutes prescribes the duty of the chief supervisor in the matter as follows:

> (1) To receive the applications of all parties for appointment to such positions;
>
> (2) To present the applications to the circuit judge upon the opening of the court, under section 2012; and
>
> (3) To furnish information to the judge in respect to the appointment of such supervisors.

The law contemplates that these proceedings shall be conducted by the chief supervisor in open court. It follows, therefore, that the applications and the information, oral or written, should be delivered to the court, and that such papers do not go into the files or records of the chief supervisor. If they should be "filed" or "entered" anywhere, it is in the office of the clerk of the court. This being the case, no charge can be made for such service, because it is not provided for in the fee bill. Section 2031 provides only for the records of the chief supervisor's office. If a fee should have been prescribed for such service, "it is beyond the power of the courts to supply the omission." (*United States* v. *McDermott*, 140 U. S., 151, 156.)

We shall discuss these items in the order in which they are classified in our statement of the case:

Item 5 (R., 14): The charge for making copies of the applications for appointment as supervisors.

The law authorized no copies. They were not necessary. The original applications were sufficient. Besides, the fee for copies of papers allowed by section 2031 is for copies of papers "on file" in the chief supervisor's office. The applications did not belong to his files.

Item 18 (R., 17): Charge for entering and indexing the applications.

The fee claimed is only allowed for entering and indexing the "records" of the chief supervisor's office. The law does not contemplate that these papers shall become such records. They belong to the files or records of the circuit court clerk, if they should be preserved.

Item 3 (R., 14), item 16 (R., 17): Charges for drawing and signing the reports (meaning furnishing information to the judge).

These items were allowed by the Court of Claims. We except to that allowance because such service is not within the purview of the fee bill. (Rev. Stat., 2031.)

In *Poinier's Case* (140 U. S., 160) this court considered that a charge for "filing" such reports "would seem to be proper" under section 2031; but it seems to have been overlooked that such reports or "information" could not be "filed" in the chief supervisor's office.

Item 11 (R., 15), item 25 (R., 18): Charges for entering and indexing the reports made to the judge.

The fee for "entering and indexing" is allowable only for "the records of his [the chief supervisor's] office."

The report is sent to the judge; hence it could not become a record of the chief supervisor's office.

The next step in this matter of appointing supervisors is set forth in the following items:

Item 15 (R. 16), Item 28 (R. 19). Charges for drawing oaths of supervisors, two folios each.

The Comptroller allowed one folio for each oath. The form of the oath is given in the Record, p. 16. It contains the *repealed provision* of section 1756, Revised Statutes. One folio was ample. But even this does not seem to be a legal charge against the United States. It is for an oath of office. All appointees to office must qualify at their own expense (*Bell* v. *United States*, 25 C. Cls. R., 26); but perhaps an exception has been made in the case of supervisors (*United States* v. *McDermott*, 140 U. S., 115), if so, the folio allowed by the Comptroller was the full legal fee.

Item 7 (R. 15), Item 21 (R. 18). Entering and indexing the oaths of supervisors.

The charge appears to be at the rate of two folios for each oath, and the Comptroller allowed for one folio each.

We object to this item for the reason stated as to items 15 and 28 above.

The law required the oaths to be filed in the chief supervisor's office. It may be presumed that the fee of 10 cents each for filing them was allowed the claimant. Entering and indexing papers of such temporary value for any purpose, was wholly unnecessary.

The words "entering and indexing" in section 2031 of the Revised Statutes have been construed by this court,

in *United States* v. *Poinier* (*supra*), to mean "recording and indexing." Delivering the opinion of the court in that case, Mr. Justice Brown said:

> It does not, however, follow that every paper which the law authorizes to be filed must therefore be recorded or copied. To entitle a paper or document to be recorded, it should have some permanent value. Where the original paper is preserved or filed—such, for instance, as the pleadings, exhibits, depositions, or other papers—in a common suit at law or equity, no necessity ordinarily exists for its being recorded. As a charge of 10 cents for filing the information was allowed by the Department, the exception to this item for recording and indexing is therefore sustained.

ITEMS OF CLASS II.

Item 4 (R., 14): Charge for drawing general and additional instructions to supervisors for use at the election of 1890.

The court below disallowed this item because it did not appear that the instructions were not printed, the record showing that all disbursements were reimbursed to appellant. In *United States* v. *McDermott* (*supra*), it was held that for such service the chief supervisor should be allowed 15 cents a folio for preparing the original instructions, and for copies thereof the expense of printing them. We therefore admit this item, $15.90.

Item 6 (R., 14): Charge for drawing and signing seventy-six special orders requiring supervisors to verify lists under section 2026.

This item was allowed by the Court of Claims. We do not now except to it.

Item 8 (R., 15), Item 10 (R., 15), Item 14 (R., 16): Charges for "entering and indexing" special letters of instructions, etc.

We object to these items because the letters and orders were of no permanent value. See Mr. Justice Brown's remarks quoted above, at Items 7 and 21.

ITEMS OF CLASS III.

We object to all the items of this class. Such ephemeral matters as auditing and certifying the per diem earned by a supervisor of elections for a few days' services can not become in any sense records of the chief supervisor's office, and the fees claimed are allowable only for records. If the services were required of him by the Attorney-General, the proof of that fact should be in the record, and not merely in appellant's brief.

Besides, it is to be observed that the charges are not for auditing and certifying accounts of supervisors, but for making them records of appellant's office, a thing he could not do, as such accounts become vouchers of the marshal's accounts, which are filed and preserved at the Treasury Department, a course of business of which this court will take judicial notice.

ITEMS OF CLASS IV.

Item 1 (R., 14): Charge for filing and caring for special reports, etc.

This item was allowed by the Court of Claims and we do not now object to it.

Item 9 (R., 15): Charge for entering and indexing the above-mentioned reports.

Obviously the rule in Poinier's Case applies to this item. The fee for filing and caring for them, 10 cents each, $127.40, in Item 1 above, is full compensation.

Item 22 (R., 18), Item 23 (R., 18): Charges for entering and indexing like special reports.

Excepted to for reason stated as to Item 9 (*supra*).

Item 2 (R., 14): Charge for filing and caring for registration lists, etc.

This item is not excepted to. It was allowed by the court below.

ITEMS OF CLASS V.

Item 20 (R., 18): Charge for entering and indexing oaths of special deputy marshals.

The rule in Poinier's Case applies. Filing the oaths was all that the statute contemplated. For that service claimant has no doubt received his fees.

Item 26 (R., 19): Charge for making, entering, and indexing mail lists of matter sent to and received from supervisors.

Under the decision in Poinier's Case such a paper could not be made a *record;* hence no fee for entering and indexing can be allowed. The charge for filing was no doubt made and allowed to appellant.

The remaining items of this class pertain to services as circuit court commissioner.

Item 29 (*R., 20*), *Item 30* (*R., 20*): The court allow these items and we do not except to them.

Item 31 (*R., 20*): Charge for entering and indexing the depositions mentioned in Item 30. "Where the original * * * depositions" are preserved or filed no necessity ordinarily exists for their being recorded (Poinier's Case, *supra*). We object to this item for the foregoing reason. That appellant has been paid for filing and caring for the depositions is, we think, a fair presumption from the industry he has displayed in elaborating the work of his office.

We have endeavored to present this case to the court in as concise a manner as possible, and yet, because of the number of items, our brief has gone to such length that we will not further occupy the time of the honorable court by calling attention to the numerous explanations made in the brief of appellant, which appears to have been evolved more from the inner knowledge of counsel than from the findings of the court below.

Respectfully submitted.

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